



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 7396-01
17 September 2002

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 August 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 14 September 1994, the Physical Evaluation Board (PEB) determined that you were unfit for duty because of a recurrent pituitary tumor, rated at 60%. An organic mood disorder, depressed, was classified as a condition which contributed to your unfitness, but was separately ratable, and migraine headaches and galactorrhea and oligomenorrhea. You accepted those findings, and were transferred to the Temporary Disability Retired List. On 29 September 1998, the PEB made preliminary findings that you remained unfit for duty because of the pituitary tumor, rated at 10%, and it elevated the adjustment disorder to a category I, unfitting condition, which it rated at 30%. The other conditions noted above were classified as not unfitting or ratable. The findings of the PEB were mailed to you on or about 8 October 1998, and received by your agent. As you did not make a timely response to the notification, your case was finalized on 14 December 1998, and you were permanently retired with a combined rating of 40%. The Department of Veterans Affairs (VA) rated your mood disorder at 10% and the pituitary tumor at 20%, from 1 December 1994, and the migraine headaches at 10% from 27 March 1997. The rating for the mood disorder was increased to 30% effective 20 July 1998, and for the headaches to

30% from 23 March 1999. You also received multiple ratings of 0% and one of 10% for conditions not considered by the PEB.

The Board was not persuaded that your mood disorder was ratable above 30% disabling at the time of your permanent retirement. It concluded that the symptoms residual to the tumor were mild, and that the remaining conditions were not unfitting or ratable. It noted that although the VA must rate all conditions it classifies as "service connected", the military departments are permitted to rate only those conditions which render the service member unfit for duty.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director